

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 17 2004

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCOS RODOLFO CHAVEZ,

Defendant - Appellant.

No. 03-1240
(D.C. No. 02-CR-342-WM)
(D. Colorado)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARTHA GUADALUPE CHAVEZ,

Defendant - Appellant.

No. 03-1243
(D.C. No. 02-CR-342-WM)
(D. Colorado)

ORDER AND JUDGMENT *

*After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before **BRISCOE** , **McKAY** , and **HARTZ** , Circuit Judges.

Husband and wife codefendants, Marcos Rodolfo Chavez and Martha Guadalupe Chavez, pleaded guilty to an indictment charging them with distribution of a controlled substance in violation of 21 U.S.C. § 841. Applying the Sentencing Guidelines, the district court determined Mr. Chavez's applicable sentencing range to be 30–37 months' imprisonment, and Mrs. Chavez's to be 24–30 months. Because the Defendants offered substantial assistance to government agents, the United States moved for a 50% downward departure for each Defendant, see U.S.S.G. § 5K1.1, and the district court granted the motions. Mr. Chavez was sentenced to 15 months in prison. Mrs. Chavez was sentenced to 12 months and one day in prison.

Defendants directed their respective defense counsel to file notices of appeal, and counsel timely complied. Mr. Chavez's notice of appeal does not state what is being appealed other than "the validity of the sentence imposed." Presumably, this refers to the district court's refusal to grant defense counsel's request for a downward departure in addition to the 50% departure it granted. Mrs. Chavez's notice of appeal states only that it is appealing "the judgments rendered."

The Defendants' counsel have jointly filed a brief under the authority of Anders v. California, 386 U.S. 738, 744 (1967). Appellate counsel who believes

an appeal to be “wholly frivolous, after a conscientious examination,” may file a brief with the court requesting permission to withdraw, but informing the court of “anything in the record that might arguably support the appeal.” Id. at 744. The defendant is then given a chance to “raise any points that he chooses”; and the court, “after a full examination of all the proceedings, . . . decide[s] whether the case is wholly frivolous.” Id.

Defendants have not filed any response to counsels’ brief, despite several letters from the court advising them of their right to do so. Additionally, the United States has filed no brief.

We have conducted our own review of the record and agree that an appeal in this case would be wholly frivolous. Accordingly, we GRANT counsels’ request to withdraw and DISMISS the appeal.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge